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HOUSE BILL 970

47TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2005

INTRODUCED BY

Terry T. Marquardt

AN ACT

RELATING TO BUSINESS; ENACTING THE SMALL BUSINESS REGULATORY RELIEF ACT; PROVIDING FOR REGULATORY FLEXIBILITY; REQUIRING STATE AGENCIES TO PREPARE REGULATORY FLEXIBILITY ANALYSES AND ECONOMIC IMPACT STATEMENTS ON PROPOSED RULES; REQUIRING PERIODIC REVIEW.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the "Small Business Regulatory Relief Act".

Section 2. LEGISLATIVE FINDINGS.--The legislature finds that:

A. a vibrant and growing small business sector is critical to creating jobs in a dynamic economy;

B. small businesses bear a disproportionate share of regulatory costs and burdens;

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1 C. fundamental changes that are needed in the
2 regulatory culture of agencies to make them more responsive to
3 small business can be made without compromising the statutory
4 missions of the agencies;

5 D. when adopting rules to protect the health,
6 safety and economic welfare of the state, agencies should seek
7 to achieve statutory goals as effectively and efficiently as
8 possible without imposing unnecessary burdens on small
9 businesses;

10 E. uniform regulatory and reporting requirements
11 can impose unnecessary and disproportionately burdensome
12 demands, including legal, accounting and consulting costs, upon
13 small businesses with limited resources;

14 F. the failure to recognize differences in the
15 scale and resources of regulated businesses can adversely
16 affect competition in the marketplace, discourage innovation
17 and restrict improvements in productivity;

18 G. unnecessary rules create entry barriers in many
19 industries and discourage potential entrepreneurs from
20 introducing beneficial products and processes;

21 H. the practice of treating all regulated
22 businesses as equivalent may lead to inefficient use of agency
23 resources, enforcement problems and, in some cases, to actions
24 inconsistent with stated legislative intent of health, safety,
25 environmental, economic welfare and other legislation;

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1 I. alternative regulatory approaches that do not
2 conflict with state objectives of applicable statutes may be
3 available to minimize the significant economic impact of rules
4 on small businesses; and

5 J. the process by which state rules are developed
6 and adopted should be reformed to require agencies to solicit
7 the ideas and comments of small businesses, to examine the
8 effect of proposed and existing rules on such businesses and to
9 review the continued need for existing rules.

10 Section 3. DEFINITIONS.--As used in the Small Business
11 Regulatory Relief Act:

12 A. "agency" means any department, agency, board,
13 commission, committee or council of the executive branch;

14 B. "proposed rule" means a proposal by an agency
15 for a new rule or for a change in, addition to or repeal of an
16 existing rule;

17 C. "rule" means any rule, regulation, order,
18 standard or statement of policy, including amendments to or
19 repeals of any of those, issued or promulgated by an agency and
20 purporting to affect one or more agencies besides the agency
21 issuing the rule or to affect persons not members or employees
22 of the issuing agency. An order or decision or other document
23 issued or promulgated in connection with the disposition of any
24 case or agency decision upon a particular matter as applied to
25 a specific set of facts shall not be deemed a rule nor shall it

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1 constitute specific adoption of a rule by the agency. "Rule"
2 does not include rules relating to the management, confinement,
3 discipline or release of inmates of any penal or charitable
4 institution, the New Mexico boys' school, the New Mexico girls'
5 school or a public hospital; or rules made relating to the
6 management of any particular educational institution, whether
7 elementary or otherwise; or rules made relating to admissions,
8 discipline, supervision, expulsion or graduation of students
9 from an educational institution; and

10 D. "small business" means a business entity,
11 including its affiliates, that is independently owned and
12 operated and employs fewer than fifty employees.

13 Section 4. ECONOMIC IMPACT STATEMENTS.--Prior to the
14 adoption of a proposed rule that may have an adverse effect on
15 small businesses, an agency shall prepare an economic impact
16 statement that includes the following:

17 A. an identification and estimate of the number of
18 small businesses that will be subject to the rule;

19 B. the projected reporting, recordkeeping and other
20 administrative costs required for compliance with the proposed
21 rule, including the type of professional skills necessary to
22 prepare the reports or records;

23 C. a statement of the probable effect on affected
24 small businesses; and

25 D. a description of any less intrusive or less

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1 costly alternative methods of achieving the purpose of the
2 proposed rule.

3 Section 5. REGULATORY FLEXIBILITY ANALYSIS.--Prior to the
4 adoption of a proposed rule after December 31, 2005 that may
5 adversely affect a small business, each agency that promulgates
6 rules that affect small businesses shall prepare a regulatory
7 flexibility analysis in which the agency, where consistent with
8 health, safety, environmental and economic welfare, shall
9 consider using regulatory methods that will accomplish the
10 objectives of applicable statutes while minimizing adverse
11 effects on small businesses. The agency shall consider each of
12 the following methods of reducing the effect of the proposed
13 rule on small businesses:

14 A. establishment of less stringent compliance or
15 reporting requirements for small businesses;

16 B. establishment of less stringent schedules or
17 deadlines for compliance or reporting requirements for small
18 businesses;

19 C. consolidation or simplification of compliance or
20 reporting requirements for small businesses;

21 D. establishment of performance standards for small
22 businesses to replace design or operational standards required
23 in the proposed rule; and

24 E. exemption of small businesses from all or part
25 of the requirements in the proposed rule.

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1 Section 6. SMALL BUSINESS REGULATORY REVIEW COMMITTEE
2 CREATED--MEMBERSHIP--POWERS AND DUTIES.--

3 A. The "small business regulatory review committee"
4 is created consisting of nine members who are current or former
5 small business owners appointed by the governor. Members shall
6 serve two-year terms. A member shall not serve more than three
7 consecutive terms. The governor shall name the chairperson of
8 the committee, and the members may select a vice chairperson
9 from the membership. The committee shall meet at the call of
10 the chairperson. A majority of the members constitutes a
11 quorum for the conduct of business. Members are entitled to
12 per diem and mileage as provided in the Per Diem and Mileage
13 Act and shall receive no other compensation, perquisite or
14 allowance.

15 B. The committee is administratively attached to
16 the economic development department and staff for the committee
17 shall be provided by the department.

18 C. In determining if a proposed rule has a
19 significant effect on small businesses, the committee may:

20 (1) direct the agency to prepare a regulatory
21 flexibility analysis no later than the end of the public
22 comment period that follows notice of the proposed rule; and

23 (2) request the agency to prepare a final
24 assessment report no later than the end of the public comment
25 period that follows the notice of the proposed rule; provided

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1 that the committee shall request a final assessment report only
2 in cases in which the committee determines that information in
3 addition to the agency's economic impact is critical to the
4 committee's determination that a proposed rule will have a
5 significant adverse effect on small business.

6 D. The committee does not have authority to:

7 (1) interfere with, modify, prevent or delay
8 an agency or administrative enforcement action;

9 (2) intervene in legal actions; or

10 (3) subpoena witnesses to testify or to
11 produce documents, but it may request witnesses to voluntarily
12 testify or produce documents.

13 Section 7. PERIODIC REVIEW OF RULES.--

14 A. By July 1, 2010, each agency shall have reviewed
15 all its rules that existed on the effective date of the Small
16 Business Regulatory Relief Act to determine whether the rules
17 should be continued without change or should be amended or
18 repealed to minimize the economic impact of the rules on small
19 businesses, subject to compliance with the stated objectives of
20 the laws pursuant to which the rules were adopted.

21 B. Rules adopted and promulgated after the
22 effective date of the Small Business Regulatory Relief Act
23 shall be reviewed every five years to ensure that they continue
24 to minimize economic impacts on small businesses while
25 implementing the state objectives of the laws pursuant to which

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1 the rules were adopted.

2 C. In reviewing its rules to minimize economic
3 impacts on small businesses, an agency shall consider the
4 following factors:

5 (1) continued need for the rule;

6 (2) the nature of complaints or comments
7 received from the public concerning the rule;

8 (3) the complexity of the rule;

9 (4) the extent to which the rule overlaps,
10 duplicates or conflicts with other federal, state and local
11 government rules; and

12 (5) the length of time since the rule has been
13 evaluated or the degree to which technology, economic
14 conditions or other factors have changed in the topical area
15 affected by the rule.

16 Section 8. EFFECTIVE DATE.--The effective date of the
17 provisions of this act is July 1, 2005.

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